



DETERMINATION OF MERGER NOTIFICATION M/15/007 FUELPLUS / VALERO

Section 21 of the Competition Act 2002

Proposed acquisition by Fuelplus Limited of certain assets of Valero Energy (Ireland) Limited

Dated 26 March 2015

Introduction

1. On 13 February 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby Fuelplus Limited (“Fuelplus”), a wholly owned indirect subsidiary of Radius Payments Solutions Limited (“Radius”), would acquire certain assets (the “Target Assets”) from Valero Energy (Ireland) Limited (“Valero Ireland”).

The Proposed Transaction

2. The proposed transaction is pursuant to a Business Sale Agreement between Fuelplus and Valero Ireland and a Reseller Agreement between Valero Ireland, Fuelplus and Diesel Card Ireland Limited (“DCI”), a wholly owned subsidiary of Radius. Both agreements are dated 12 February 2015. The effect of the proposed transaction would be that Fuelplus would acquire the Target Assets from Valero Ireland. The Target Assets comprise, in essence, the goodwill, customer database and records of Valero Ireland’s high-volume fuel card business.²

The Undertakings Involved

The Acquirer – Fuelplus and Radius

3. Fuelplus, headquartered in Bray, County Wicklow, is a wholly owned subsidiary of DCI, which in turn is a wholly owned subsidiary of Radius.
4. Radius is a private limited company, headquartered in Crewe, United Kingdom.³ Within Europe, through its various wholly owned subsidiaries, Radius is involved in:

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

² As stated by the parties “*The agreement governing the Proposed Transaction constitutes an assignment of Valero’s customer contracts with its high-volume fuel card customers*” Notification, page 5. In essence, Radius, through Fuelplus, would acquire the revenues derived from customers using the two Valero Ireland branded fuel cards described subsequently in paragraph 10.

³ For more information on Radius see <<http://www.radiuspaymentsolutions.com>>.



- Issuing Radius brand fuel cards e.g., European Diesel Card (“EDC Card”), Fleet Card, Fleet Pass, Fuel Plus and Truckone to customers such as transport and logistics companies.
 - Reselling fuel cards branded by other companies (e.g., British Petroleum, Esso,⁴ Shell and Texaco).
 - Business outsourcing services to fuel card issuers e.g., international oil companies and national and regional fuel card issuers.
5. The issuing and reselling of fuel cards and the supply of business outsourcing services is described in greater detail in paragraphs 16-23 below.
6. Within the State, through its wholly owned subsidiaries including DCI and Fuelplus, Radius is involved in:
- Issuing Radius brand cards such as the EDC card, DCI card, Fuel Plus, Fuel Wise and Direct Fuels cards.
 - Reselling cards issued by Esso, Topaz and Texaco (including the Fastfuel Ireland and Texaco Diesel fuel cards, to which the proposed transaction relates).
 - Business outsourcing services to fuel card issuers such as CSC Group,⁵ oil companies and fuel distributors in Ireland such as Topaz, Texaco, and Emo.
7. For the financial year ending 31 March 2014, Radius’ worldwide turnover was approximately €[...] billion,⁶ of which approximately €[...] million was generated within the State. The vast majority, approximately €[...] million, of Radius’ turnover within the State is derived from issuing Radius brand fuel cards.⁷

The Vendor – Valero Ireland

8. Valero Ireland’s ultimate parent company is Valero Energy Corporation (“Valero”), a public company traded on the New York Stock Exchange and headquartered in San Antonio, Texas, USA. Valero, through its various subsidiaries, is an international manufacturer and marketer of transportation fuels, petrochemical products and power.
9. Within the State, Valero Ireland is involved in the distribution and marketing of Texaco branded fuels e.g., petrol and diesel motor fuels and domestic heating oil. Also, within the State, Valero Ireland issues three branded fuel cards:

⁴ The Radius Group recently acquired joint control (via a joint venture with WEX Inc., a US-based payment solutions provider) over Esso’s European commercial fuel cards business. The European Commission approved the joint venture, which took effect from 1 December 2014. See

http://ec.europa.eu/competition/mergers/cases/decisions/m7156_20140305_20310_3540345_EN.pdf

⁵ For more information on CSC Group see <<http://www.cscgroup.org.uk>>. CSC Group states as follows “Established in 1993, CSC Group is one of the UK & Ireland’s leading suppliers of fuel cards to businesses & the transport industry”.

⁶ This figure includes turnover derived from Radius’ involvement in joint ventures. Excluding turnover derived from Radius’ involvement in joint ventures gives a figure of €[...] billion. These figures have been calculated using the average ECB exchange rate for the periods 1 April 2013 – 31 March 2014 €1=£0.8429.

⁷ Radius states that, within the State, for the financial year ended 31 March 2014 reselling other brand fuel cards generated turnover of approximately €[...] million and business outsourcing services generated turnover of €[...] million.



- Fastfuel Ireland Card, which is accepted at over 350 sites in Ireland.
- Texaco Diesel Card, a card aimed at high-volume diesel customers in the heavy goods vehicle category and which can be used at any site in the DCI network.
- Texaco Fuel Card, a 'pump priced' card which can be used at over 170 service stations in Ireland.

The Target Assets

10. The Target Assets include: (i) goodwill associated with the end-user high-volume fuel card business of Valero Ireland; (ii) customer database, including customer contracts; and (iii) business records, including customer records for the Fastfuel Ireland Card and the Texaco Diesel Card currently provided by Valero Ireland.
11. Other assets related to Valero Ireland's fuel card business do not form part of the proposed transaction. Valero Ireland will retain ownership of the intellectual property and responsibility for all processing and issuing activities in relation to all its fuel cards.
12. As discussed subsequently in paragraphs 35-38, the proposed transaction would result in Radius, through Fuelplus, being the sole reseller within the State of the Fastfuel Ireland and Texaco Diesel fuel cards for the first [...] after completion of the proposed transaction. After [...] have elapsed from completion other fuel card resellers will be permitted to resell these cards and after [...] from completion Valero Ireland will again be in a position directly to issue and market its Texaco Fastfuel Ireland and Texaco Diesel fuel cards.
13. For the financial year ending 31 January 2014, turnover attributable to the Target Assets was approximately €[...] million all of which was generated within the State.

Rationale for the Proposed Acquisition

14. The parties state that:

*"The Target Business will add volume to the Radius Group's business, enabling it to enhance its buying power with major fuel suppliers and improve its competitiveness. The Proposed Transaction represents a further opportunity to offer efficiencies and synergies to the existing customers of the Target Business by providing a bespoke service which cannot be matched by the major oil companies or Valero because of the more general nature of their businesses."*⁸

Third Party Submissions

15. No submission was received.

⁸ Notification page 6.



Description of the Fuel Card Sector

16. There are three types of business activities relating to the fuel cards sector: (i) issuing of own brand fuel cards; (ii) reselling fuel cards on behalf of other fuel card issuers such as Esso, Texaco, Topaz; (iii) the provision of business outsourcing services to fuel card issuers which include account consolidation, payment services, customer management/relations activities etc.

Issuing Fuel Cards

17. Fuel cards provide fuel purchasers with an alternative payment mechanism to cash, debit cards or credit cards. For example, fuel can be purchased on account (i.e., on credit terms) from fuel station forecourts.
18. The use of fuel cards also provides a way for fuel purchasers to manage fuel costs. For example, the price of fuel purchased with a fuel card will typically differ from the 'pump price' (i.e., the price displayed at a fuel station forecourt).⁹ A fuel card price is also constant across different locations. For example, in relation to its Truckone card Radius offers weekly fixed pricing on diesel at all filling stations, irrespective of location. This guarantees that the price paid for diesel is not subject to local variations as would be the case for pump prices.¹⁰

Reselling Fuel Cards

19. Fuelcard issuers (e.g., Valero Ireland) allow fuel card resellers to sell fuel cards on their behalf. In this way the card issuer (e.g., Valero Ireland) seeks to increase the volume of sales of their fuel products by reaching a larger set of customers.
20. For example at present Radius is a reseller of fuel cards issued in the first instance by Valero Ireland. As a reseller, Radius purchases fuel from Valero Ireland in sufficient volumes to negotiate a discounted price. In turn Radius, as a reseller of Valero Ireland fuel cards, and other branded fuel cards, will typically negotiate a price with the cardholder which is also a discount relative to the pump price. Radius states that

"In relation to fuel companies, fuel card providers compete based on the volume of fuel purchased by customers using the card or cards of the relevant fuel company. Fuel card providers also compete with each other on the basis of the terms offered to the fuel companies for the right to resell the fuel companies' cards" and

"In relation to customers, fuel card providers compete based on (i) price and (ii) the depth and breadth of the network on which the relevant cards can be used."¹¹

21. As with own-branded cards, the price per litre paid by the card holder to a reseller, such as Radius, will be higher than the price per litre paid by the reseller to the issuer of the

⁹ The price paid by the card holder to Radius will be higher than the price paid by Radius to the fuel supplier.

¹⁰ See <<http://www.radiuspaymentsolutions.com/our-services/brand>>.

¹¹ Correspondence from Radius dated 13 March 2015.



fuel card. Typically the price an end customer pays is based on the volume of product that it purchases and on the particular credit worthiness of that customer. The gross margin available to the reseller is then used to cover the cost of processing, sales, bad debts and other usual business costs.

Business Outsourcing Services

22. Both the issuing and reselling of fuel cards involves various business and sales services such as:
- Sales and marketing
 - Card and PIN production and card issuing
 - Transaction authorisation and collection
 - Data processing and velocity checking
 - Invoicing and direct debiting
 - Credit vetting and management
 - Web-based customer services
 - Bespoke smartphone apps
 - Management accounting and reporting.¹²
23. Radius currently supplies business outsourcing services to Valero Ireland with respect to fuel cards issued by Valero Ireland. In contrast to the issuing and reselling of fuel cards, the turnover generated by business outsourcing services is not related directly to the volume or price of fuel purchased by fuel card holders. Valero is not involved in the reselling of fuel cards issued by other firms.

Competitive Analysis

Horizontal Overlap

24. There is a horizontal overlap in the activities of the parties within the State as both Radius and Valero Ireland are involved in the fuel card sector. Whereas Valero Ireland's involvement is limited to issuing its own brand fuel cards, Radius, is both an issuer of own brand fuel cards and a reseller of non-Radius branded cards.¹³

¹² For more information on Radius business outsourcing services see <<http://www.radiuspaymentsolutions.com/our-services/outsourcing>>.

¹³ The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant product markets. In its Determination in M/14/013 - Radius / DCI / NCS, the Competition Authority did not distinguish between selling own branded cards (such the sale by Radius of Radius branded cards) to customers and the reselling of other brand cards.



25. There is no overlap in the supply of business outsourcing services in the State as only Radius supplies business outsourcing services.
26. As a result of the proposed transaction, and in particular the non-compete agreements (as discussed further in paragraphs 35-38), Radius would, in effect, become the sole source of two of the Valero Ireland fuel cards within the State for [...] post completion.
27. The parties estimate that, within the State, Radius has a market share of approximately [20-30]% of the fuel purchased using own brand fuel cards while the two Valero Ireland fuel cards to which the proposed transaction relates have a market share of approximately [0-10]%.
28. The parties identify Topaz and Maxol as the largest competitors in the issuing of own brand cards with market shares of [15-25]% and [5-15]% respectively.¹⁴ Topaz and Maxol and others¹⁵ would continue to provide a competitive constraint on the merged entity while Valero Ireland will retain a presence to some extent through issuing the Texaco Fuel Card, which is not included in the proposed transaction.
29. It is also the case that fuel purchasers can choose between fuel cards purchased directly from a fuel card issuer or from fuel card resellers. Radius argues that the issuing and resale of fuel cards constitute two segments of the same market and it estimates that it has a market share of approximately [15-25]% in the State with respect to reselling. Valero Ireland is not involved in reselling fuel cards in the State.
30. Consequently, to the extent that cards supplied by resellers provide a competitive constraint on own brand cards issued directly, the activities of other resellers within the State¹⁶ can be expected to continue to provide a competitive constraint on Radius subsequent to the implementation of the proposed transaction.
31. While the position of Radius will be strengthened by the non-compete agreements (discussed further in paragraphs 35-38) these clauses are of specified and limited duration. Thus Radius will be the sole supplier of the Fastfuel Ireland and Texaco Diesel fuel cards for a period of [...] only after completion of the proposed transaction. Valero Ireland retains an option to compete with Radius by issuing fuel cards after the expiry of a [...] period following completion.
32. The proposed transaction does not limit Valero Ireland's activities in Northern Ireland, i.e., Valero Ireland would not, as a result of the proposed transaction, be restricted from issuing or marketing the Texaco Fastfuel Ireland Card or the Texaco Diesel Card in Northern Ireland. Consequently, to the extent that fuel sales in Northern Ireland provide a competitive constraint within the State, Valero's activities in Northern Ireland can be expected to act as a competitive constraint on Radius subsequent to the implementation of the proposed transaction.

Vertical Relationships

¹⁴ Notification Annex 5.2.

¹⁵ The parties identify the following UK and European based competitors: DKV Euro Service, AS24, Euroshell, Keyfuels, UTA, British Petroleum, Total and Esso.

¹⁶ The parties identify CSC Group and Morgan Fuels as competitors in the State.



33. There is an existing vertical relationship between Radius and Valero Ireland. Radius currently supplies fuel card related business outsourcing services to Valero Ireland. These business outsourcing services would be internalised by Radius once the proposed transaction is implemented. Radius also supplies business outsourcing services to other customers within the State such as [...]. As stated above in paragraph 7, the turnover for Radius generated by the supply of business outsourcing services is [...] approximately €[...] million. This does not create an opportunity for Radius to foreclose on its competitors as a result of the proposed transaction.

Conclusion

34. In light of the above the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

35. Valero Ireland has entered into non-compete and non-solicitation commitments of [...] ¹⁷, within the State, after the completion of the proposed transaction.

36. In particular, Valero Ireland would agree not to directly issue or market the Texaco Fastfuel Ireland Card or the Texaco Diesel Card, within the State, for [...] ¹⁸ following completion of the proposed transaction. ¹⁹ Valero Ireland states that

“Given that Valero [Ireland] will remain in the wider fuel sector in the State and will retain the intellectual property associated with the Target Business, the [...] period in respect of issuing and marketing activities is necessary in order to protect the goodwill transferred in the Proposed Transaction.” ²⁰

37. Valero Ireland also would agree not to solicit, entice away or employ any senior manager of the Target Business for [...] ²¹ from completion and states that

“For the same reasons described above regarding the [...] period in respect of issuing and marketing activities, this provision is also necessary to protect the goodwill transferred in the Proposed Transaction.” ²²

38. In addition Valero Ireland states that it would also agree that

“during the [...] period commencing on the Effective Time, [Valero Ireland] will not appoint any additional reseller to issue or market the Cards [i.e., the Texaco Fastfuel Ireland Card or the Texaco Diesel Card]” within the Republic of Ireland.” ²³

¹⁷ The duration of these ancillary restraints does not exceed the maximum duration acceptable to the Commission. In this respect the Commission follows the approach adopted by the EU Commission in paragraph 20 of its “Notice on restrictions directly related and necessary to concentrations” (2005). See

<[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)>.

¹⁸ Ibid.

¹⁹ Business Sale Agreement Clause 9 page 7.

²⁰ Notification page 20.

²¹ *Op cit.* Footnote 17.

²² Notification page 20.

²³ Business Sale Agreement Clause 9 page 7. The Effective Time is the time at which the proposed transaction is implemented.



39. Given the particular nature of the proposed transaction, the Commission considers that the non-compete and non-solicitation covenants are directly related to and necessary for the implementation of the proposed transaction.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition, whereby Fuelplus Limited, a wholly owned indirect subsidiary of Radius Payments Solutions Limited, would acquire certain assets from Valero Energy Ireland Limited will not be to substantially lessen competition in any market for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission